

ORDINANCE NO 9-2016-02 INTRODUCED BY: Justin Elpers  
PETITIONER: The Guagenti Family Limited Partnership

**AN ORDINANCE TO VACATE part of the east 40' of an 80' right of way dedicated by Deed Book 227, Page 447 for First Avenue**

**WITHIN THE CITY OF EVANSVILLE, INDIANA.**

BE IT ORDAINED by the Common Council of the City of Evansville, Indiana, as follows, to-wit:

Section I. That pursuant to MCE Section 12.05.450, a sworn petition, was presented to the Common Council of the City of Evansville, requesting that the platted rights-of-ways described in Section III, below, be vacated by the City of Evansville.

Section II. That after due and proper notice, a timely public hearing was convened by the Common Council, at which time all interested persons were permitted to address the Common Council regarding said vacation.

Section III. That the Common Council of the City of Evansville, after due investigation and consideration, has determined that the nature and extent of the public use and the public interests to be subserved are such as to warrant the vacation of that part of the dedicated RIGHT-OF-WAY described as follows, and further indicated by the words "To Be Vacated" on the drawing hereto attached, which is made a part of this Ordinance:

Part of the Southwest Quarter of the Southeast Quarter of Section 6, Township 6 South, Range 10 West of the Second Principal Meridian and lying in the City of Evansville, Vanderburgh County, Indiana and being part of the east 40 feet of the 80 feet of right of way for First Avenue dedicated in Deed Volume 227, Page 447 recorded in the Office of the Recorder of Vanderburgh County, Indiana and being more particularly described and bounded as follows:

Commencing at the Southwest Corner of said Quarter Quarter section; thence along the south line of said Quarter Quarter section, South 87 degrees 45 minutes 10 seconds East 40.00 feet; thence parallel with the west line of said Quarter Quarter Section, North 01 degree 37 minutes 52 seconds East 55.01 feet to the point of beginning; thence along the east 40' right of way line of First Avenue, North 01 degree 37 minutes 52 seconds East 34.99 feet to a point on the north line of a tract of land conveyed to Roy D. & Ruth I. Gerard recorded in said Deed Volume 227, Page 447; thence along said north line, South 87 degrees 45 minutes 10 seconds East 40.00 feet; thence parallel with the west line of said Quarter Quarter Section, South 01 degree 37 minutes 52 seconds West 50.00 feet to a point on the north 40 foot right of way line of Mill Road; thence along said north 40 foot right of way line, North 87 degrees 45 minutes 10 seconds West 24.99 feet to a corner of road right of way recorded in Deed Record 551, Page 257; thence along said right of way, North 43 degrees 03

**FILED**

**JAN 12 2016**

*Janet Winkler*  
CITY CLERK

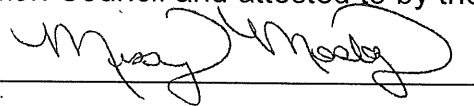
minutes 56 seconds West 21.34 feet to the point of beginning containing 1887 square feet (0.04 acres)

(See attached exhibit)

Section IV. That the vacation of said public way described in Section III. above will not be subject to any easements or reservations:


Therefore, the Common Council of the City of Evansville, Indiana, does hereby find the above-described PUBLIC RIGHT-OF-WAY is no longer required for public use, and the public interest will be served by such vacation, and the Common Council of the City of Evansville does hereby vacate the PUBLIC RIGHT-OF-WAY described in Section III, above, subject to the terms and conditions as stated in this Ordinance.

PASSED by the Common Council of Evansville, Indiana, on this 8 day of February, 2016, and on said day signed by the President of said Common Council and attested to by the City Clerk.  
ATTEST:

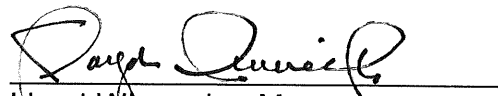
  
Missy Mosby, President

  
Laura Brown Windhorst, City Clerk

Presented by me, the undersigned, City Clerk of the City of Evansville, Indiana, to the Mayor of said City, the 9 day of February, 2016.

  
Laura Brown Windhorst, City Clerk

Having examined the foregoing Ordinance, I do now as Mayor of said City of Evansville, Indiana, approve said Ordinance, and return; same to the City Clerk this 9th day of FEBRUARY, 2016 at 4:00 p.m.

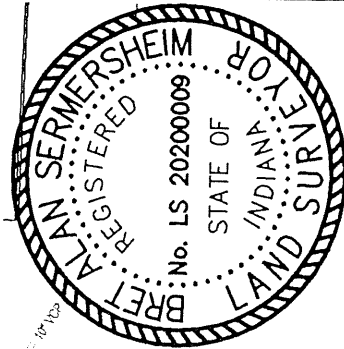
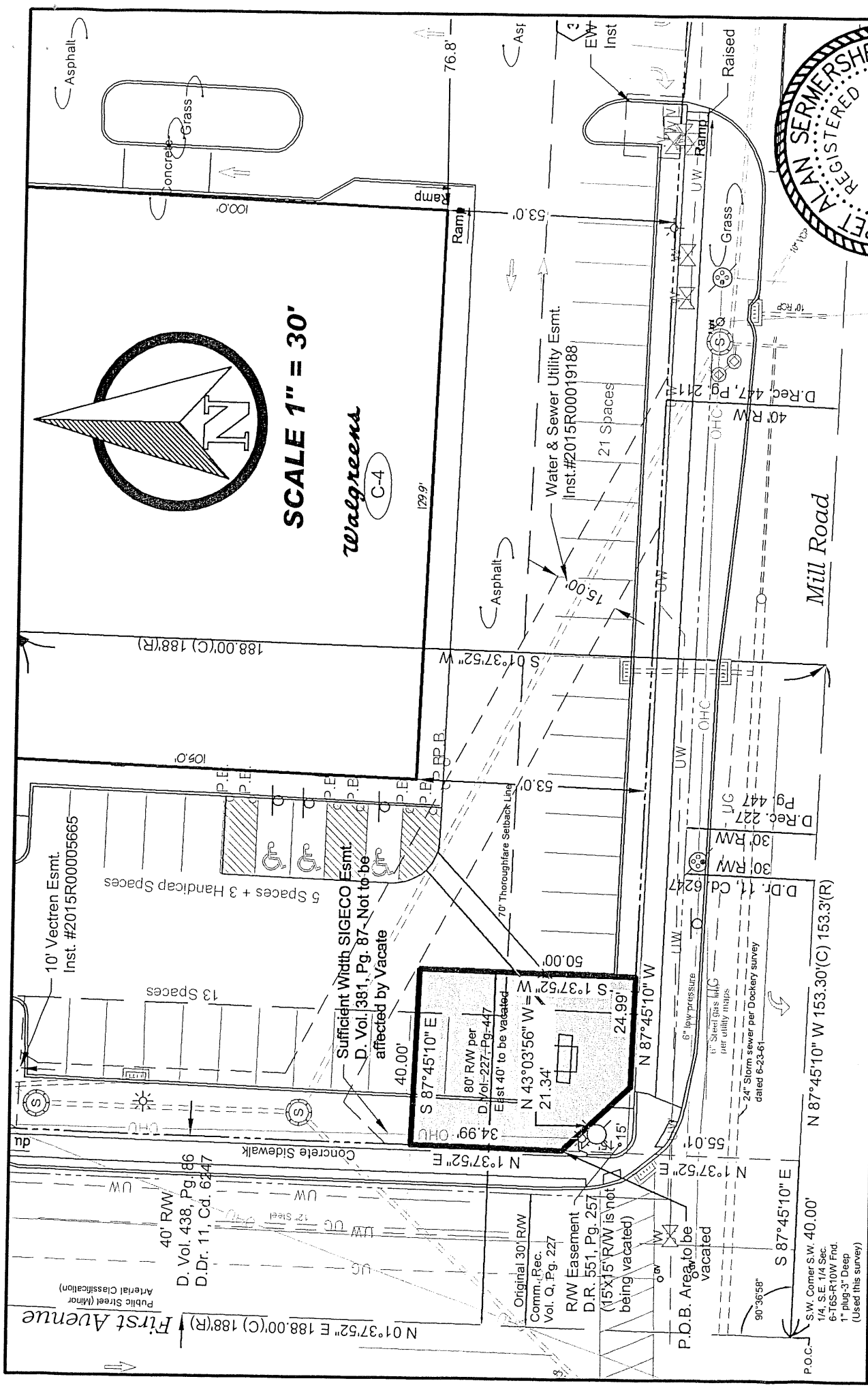
  
Lloyd Winnecke, Mayor  
City of Evansville, Indiana

APPROVED AS TO FORM:  
Ted Ziemer-Corporate Counsel

This instrument was prepared by Bret A. Sermersheim of Morley and Associates, Inc., 4800 Rosebud Lane, Newburgh, Indiana 47630

Petitioner's Mailing Address:  
Guagenti Family Limited Partnership  
PO Box 1159  
Deerfield, IL 60015

"I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law." Bret Sermersheim



Bret Alan Sermersheim  
November 9, 2015

Exhibit "B"

Designed By:	?	Job Number:	7154.4.008A
Drawn By:	BAS	Date:	11/09/2015
File Name:	7154 40' RW Vacate.dwg		

40' RW Vacation Exhibit  
4701 N. First Avenue  
Evansville, IN 47710

Engineering  
Surveying  
Architecture  
Construction Management  
4800 Rosebud Lane  
Newburgh, IN 47630  
(812) 464-9585  
www.morleyandassociates.com



**SWORN PETITION FOR VACATION of part of the east 40' of an 80' right of way dedicated by Deed Book 227, Page 447 for First Avenue**

Guagenti Family Limited Partnership (the Petitioner), files this Sworn Petition for the vacation of part of the east 40' of an 80' right of way dedicated by Deed Book 227, Page 447 for First Avenue described to the Common Council of the City of Evansville, Indiana, in accordance with the Municipal Code of Evansville, Subchapter 12.05.450 et. seq. (the code), as follows:

1. Name and address of Petitioner: Guagenti Family Limited Partnership  
PO Box 1159  
Deerfield, IL 60015

Principal place of business:  
Evansville, IN  
Phone: 812-423-3183

2. Circumstances: Petitioner seeks the vacation of the above noted right of way in order to clear up a cloud on the title.

3. Legal Description of the right-of-way proposed to be vacated:

Part of the Southwest Quarter of the Southeast Quarter of Section 6, Township 6 South, Range 10 West of the Second Principal Meridian and lying in the City of Evansville, Vanderburgh County, Indiana and being part of the east 40 feet of the 80 feet of right of way for First Avenue dedicated in Deed Volume 227, Page 447 recorded in the Office of the Recorder of Vanderburgh County, Indiana and being more particularly described and bounded as follows:

Commencing at the Southwest Corner of said Quarter Quarter section; thence along the south line of said Quarter Quarter section, South 87 degrees 45 minutes 10 seconds East 40.00 feet; thence parallel with the west line of said Quarter Quarter Section, North 01 degree 37 minutes 52 seconds East 55.01 feet to the point of beginning; thence along the east 40' right of way line of First Avenue, North 01 degree 37 minutes 52 seconds East 34.99 feet to a point on the north line of a tract of land conveyed to Roy D. & Ruth I. Gerard recorded in said Deed Volume 227, Page 447; thence along said north line, South 87 degrees 45 minutes 10 seconds East 40.00 feet; thence parallel with the west line of said Quarter Quarter Section, South 01 degree 37 minutes 52 seconds West 50.00 feet to a point on the north 40 foot right of way line of Mill Road; thence along said north 40 foot right of way line, North 87 degrees 45 minutes 10 seconds West 24.99 feet to a corner of road right of way recorded in Deed Record 551, Page 257; thence along said right of way, North 43 degrees 03 minutes 56 seconds West 21.34 feet to the point of beginning containing 1887 square feet (0.04 acres)

4. Names, addresses, and zip codes of all owners of land within 200 feet of the right-of-way to be vacated.

See attached Exhibit "A".

5. Location Map and Site Plan  
See attached Exhibit "B"

6. Copies of letters from Vectren, AT&T, Time Warner Cable, WOW Communications, Evansville Water and Sewer Utility, the Evansville City Engineer, and the Evansville Fire Department are attached as Exhibits "C" through "I", inclusive.

That the above described right of way to be vacated, based upon the comments from the above operating utilities and entities, will not be subject to any restrictions.

IN WITNESS THEREOF, the undersigned has caused this petition to be executed this

8 day of January, <sup>2016</sup>2015.

GUAGENTI FAMILY LIMITED PARTNERSHIP

By: A. Guagenti  
A. Guagenti, General Partner

# State of Indiana

County of Vanderburgh ) SS  
 )

Before me, the undersigned Notary Public in and for said county and state, personally appeared the above named A. Guagenti as General Partner of the Guagenti Family Limited Partnership, he being first duly sworn by me upon his oath, say that the facts alleged in the foregoing Petition are true.

Signed and sealed this 8 day of January, 2016

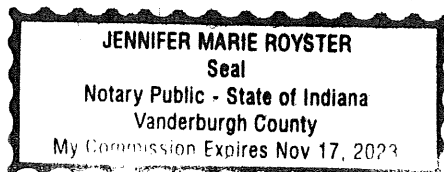
Notary Public

James M. Kupper  
(printed name)

My commission expires:

Nov 17, 2023

The county of my residence  
is Van Derburgh County,  
Indiana



82-06-06-034-237.001-020  
Richard S. Mayo  
4700 First Ave  
Evansville, IN 47710

**Adjoiner's List**  
**12/11/2015**  
**7154.4.008**

82-06-06-034.237.002-020  
Norman C & Pamela L Scheller  
Irrevocable Trust  
630 Pfeiffer Rd.  
Evansville, IN 47711

82-06-07-034-083.061-020  
North Park Corp  
P.O. Box 9020  
Evansville, IN 47724

82-06-06-034-237.003-020  
82-06-06-034-237.004-020  
Eugene H & Elizabeth J Nurrenbern  
4712 First Ave.  
Evansville, IN 47710

North Country Club Neighborhood Assoc.  
Bob Mangold  
714 Concord Blvd.  
Evansville, IN 47710

82-06-06-034-129.001-020  
Eric J & Shirley Rausch  
Hitch JTRS  
724 Windsor Ave  
Evansville, IN 47710

82-06-06-034-129.002-020  
Rebecca L Seifert  
Mark a Special Needs Trust Kamp  
14621 McCutchan Rd.  
Evasville, IN 47725

82-06-06-034-129.003-020  
Billie G & Lorraine M Uncles  
708 Windsor Ave.  
Evansville, IN 47710

82-06-06-034-084.006-020  
Andrew Guagenti & Karen Grunow  
Walgreen Co. Real Estate Property Tax  
P.O. Box 1159  
Deerfield, IL 60015

82-06-07-034-082.076-020  
Super Market Developers Inc.  
Wholesale Grocers Inc.  
5000 Kansas Ave  
Kansas City, KA 66106-0082

82-06-07-034-082.098-020  
D Michael & Dianne Elaine Dean  
622 Strawberry Hill Rd.  
Evansville, IN 47711

82-06-07-034-082.044-020  
Warren Bank Property LLC  
P.O. Box 9020  
Evansville, IN 47724

**EXHIBIT "A"**







Energy Delivery

P.O. Box 209

Evansville, Indiana 47702-0209

January 13, 2016

Bret A. Sermersheim, P.L.S.  
Morley & Associates Inc.  
4800 Rosebud Lane  
Newburgh IN 47630

Re: Vacation of 40' Additional R/W for NE Corner of First Avenue & Mill Road

Petitioner: Hogan Development/Walgreens

Dear Mr. Sermersheim:

Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana investigated the area proposed for vacation.

Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana has no facilities located within the above described location according to the attached information you provided on January 12, 2016. This company, therefore, has no objection to its vacation.

The consent granted by Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana for said vacation is valid for ninety (90) days. This is due to the constant installation of our facilities at numerous locations. If this vacation request is not petitioned and passed by the Common Council within this time period, this letter becomes invalid, requiring a new study to be done by Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana.

Please forward to me a copy of the recorded ordinance upon passing so that I may update our records. Thank you for your cooperation.

Sincerely,

Becky Merkley, SR/WA  
Land Agent  
Land Services  
Vectren Energy Delivery of Indiana  
812 491 4544

RECEIVED  
JAN 15 2016  
Morley & Associates

EXHIBIT "C"



134 NW Sixth Street  
Evansville, Indiana 47708

November 25, 2015

Bret Sermersheim  
Morley & Associates, Inc.  
4800 Rosebud Lane  
Newburgh, Indiana 47630  
[brets@morleyandassociates.com](mailto:brets@morleyandassociates.com)

RE: Hogan Development / Walgreens  
40' Additional R/W for First Avenue  
NE Corner First Avenue & Mill Road  
Project 7154.4.008A

Mr. Sermersheim,

AT&T has no objection to the vacation of the east 40' of the 80' right-of-way of First Avenue as described in your letter, legal description, and exhibit of October 30, 2015. Per your survey, AT&T has no facilities within the area.

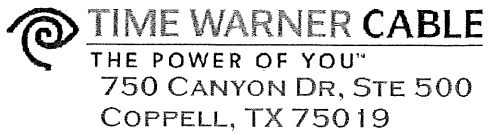
Please email or call me at 812/464-6050 if you have questions.

Regards,

A handwritten signature in black ink, appearing to read "Marc Clark".

Marc Clark  
AT&T Design Engineer  
[mc3429@att.com](mailto:mc3429@att.com)

EXHIBIT "D"



November 9, 2015

Bret Sermersheim  
Morley and Associates, Inc.  
4800 Rosebud Lane  
Newburgh, IN 47630

SUBJECT: Morley and Associates - 7154.4.008A - NE Corner of First & Mill

We have reviewed your request for the above referenced Utility Easement, and Time Warner Cable (TWC) hereby grants the abandonment of 40 feet East of First Ave x 50 feet North of Mill Rd in Evansville, IN.

If applicable, please contact the INDIANA Excavation Safety System (INDIANA 811) to have facilities marked & located within affected easements before any excavations are started.

For future reference, please send all utility coordination, abandonments, encroachments, plat signatures, or serviceability requests, or notices of relocation to [west-engineering-relo@twcable.com](mailto:west-engineering-relo@twcable.com). Please share this information with whoever needs these services.


Sincerely,  
  
Lisa Law  
Manager of Data Operations  
Time Warner Cable  
750 Canyon Drive  
Coppell, TX 75019  
1-972-537-5323

Exhibit "E"

## Bret Sermersheim

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**From:** Thomas Cheski <thomas.cheski@wowinc.com>  
**Sent:** Monday, November 02, 2015 10:29 AM  
**To:** Bret Sermersheim  
**Cc:** James Detalente  
**Subject:** RE: Vacate 40' of First Avenue



It's that kind of experience.

November 2, 2015  
Morley and Associates, Inc.  
4800 Rosebud Lane  
Newburgh, IN. 47630

Attn: *Bret Sermersheim, PS*

**RE: Vacate 40' of First Avenue Evansville, Indiana**

Dear Mr. Sermersheim,

The SIGECOM/WOW Outside Plant Engineering department reviewed the attached drawing. The findings of this review determined that SIGECOM/WOW does not have facilities within the public utility easement on the property located at the NE corner of 1<sup>st</sup> Avenue and Mill Road in Evansville Indiana.

As a result of these findings, SIGECOM/WOW does not have any objection to the vacate proposal for the public utility easement within the public utility easement on the property located at the NE corner of 1<sup>st</sup> Avenue and Mill Road in Evansville Indiana. This letter granted by SIGECOM/WOW for said vacation is valid for one hundred and eighty (180) days. If the Evansville City Council passes this vacation request, I would like to receive a copy of the recorded ordinance to be used for the purpose of updating our records.

Please contact my office should you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Cheski", with a stylized flourish at the end.

Tom Cheski  
Construction Engineer  
WOW! Internet-Cable-Phone  
Office – 812-437-0395  
Mobile – 812-470-4572  
Email – thomas.cheski@wowinc.com

Exhibit "F"



LLOYD WINNECKE  
MAYOR

**EVANSVILLE WATER &  
SEWER UTILITY**

ALLEN R. MOUNTS  
DIRECTOR

1 NW Martin Luther King Blvd. Room 104 • Evansville, Indiana 47708  
P O Box 19, Evansville, Indiana 47740-0001  
(812) 436-7846 • FAX (812) 436-7863 • TDD (812) 436-7864

November 17, 2015


Mr. Bret Sermersheim  
Morley and Associates, Inc.  
4800 Rosebud Lane  
Newburgh, IN 47630

Re.: Hogan Development / Walgreens  
40' Additional R/W for First Avenue, NE Corner of First and Mill

Mr. Sermersheim,

This letter is in response to your inquiry concerning the vacation request identified above. The Evansville Water and Sewer have no objection to the vacation of this easement. If you have any questions, please call me at 421-2130 x2228.

Sincerely,

  
Michael D. Labitzke, PE  
Deputy Director of Utilities - Engineering

*Exhibit "6"*



**City Engineer's Office**  
CIVIC CENTER COMPLEX, ROOM 321  
1 N.W. MARTIN LUTHER KING, JR BLVD.  
EVANSVILLE, INDIANA 47708-1875  
Phone: (812) 436-4990 FAX: (812) 436-4976  
TDD/Hearing Impaired (812) 436-4934

LLOYD WINNECKE  
MAYOR

BRENT A. SCHMITT, P.E.  
CITY ENGINEER

November 10, 2015

Bret A. Sermersheim, PS  
**Morley and Associates, Inc**  
4800 Rosebud Lane  
Newburgh, IN 47630

Re: Hogan Development /Walgreens

Dear Bret,

In regards to the above referenced proposed vacation (your revised exhibit and description attached for reference) our office has the following comment:

There are no facilities under the jurisdiction of this office within the area proposed for vacation. As such, the City Engineer's office has no issue with the vacation of the subject Right-of-Way area.

Thank you and please feel free to contact me if you have any questions.

Sincerely,

City Engineer's Office

A handwritten signature in black ink, appearing to read "Chris Weil", is written over a large, stylized oval shape.

By: Chris Weil, P.E.  
Assistant City Engineer

Attachments  
Cc: File

*Exhibit "H"*



LLOYD WINNECKE  
MAYOR

MIKE CONNELLY  
FIRE CHIEF

550 S.E. Eighth St. Evansville, IN 47713-1786  
(812) 435-6235 FAX: (812) 435-6248 TDD/Hearing Impaired: (812) 436-4925

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November 10, 2015

Bret Sermersheim  
Morley & Associates  
4800 Rosebud Lane  
Newburgh, IN 47630

RE: Petition for Vacation of Right-of-Way – Streets and Alleys listed below;

Mr. Sermersheim;

We recognize & acknowledge request for Vacation Right-of-way of area referenced on the vacation exhibit, 4701 N. First Avenue, Vanderburgh County, Indiana, included in your email of October 30, 2015.

- 1) Portion of existing right-of-way, with dimensions of 40' in width and 50' in length. This easement lies on the northeast corner of the intersection known as First Avenue and Mill Road.

**Existing Conditions: Alley/Street/Roadway**

**Effect of Vacation on Fire Department: none**

**Recommendations: The Evansville Fire Department has no objection in closing of above referenced alley/street/roadway.**

Sincerely,

**Dan Grimm**  
Chief Fire Marshal  
Fire Prevention & Education  
Evansville Fire Department  
550 SE 8th Street  
Evansville, IN 47713  
812.436.4428



EXHIBIT "I"